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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/075,795	02/13/2002	Donald W. Bryan	T9742	9196
20449	7590	12/09/2008		
KARL R CANNON				
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SANDY, UT 84091				
EXAMINER				
COMSTOCK, DAVID C				
ART UNIT		PAPER NUMBER		
3733				
MAIL DATE		DELIVERY MODE		
12/09/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/075,795

**Applicant(s)**

BRYAN, DONALD W.

**Examiner**

DAVID COMSTOCK

**Art Unit**

3733

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 25 August 2008.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-55, 57 and 59-192 is/are pending in the application.
- 4a) Of the above claim(s) See Continuation Sheet is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19, 27-36, 92-101, 127-136, 144-152, 160, 161, 169-177, 191 and 192 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 13 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-946)
- 3) ☐ Information Disclosure Statement(s) (PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

Continuation of Disposition of Claims: Claims **withdrawn** from consideration are 20-26,37-55,57,59-91,102-126,137-143,153-159,162-168 and 178-190.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-19, 27-36, 92-101, 127-136, 144-152, 160, 161, 169-177, 191 and 192 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brace et al. (6,187,005; cited by Applicant) in view of Heinig et al. (cited by Applicant).

Brace et al. discloses the claimed invention including a spinal fixation device comprising a connecting member 60, a fastening member 14, 66, and an elongate support member 16 (see e.g. Figs. 6-8). The connecting member comprises a female-tapered through passage. The fastening member can penetrate bone and has a male-tapered external portion 66 configured and dimensioned to matingly engage with the sidewalls defining the female-tapered through-passage to lock the connecting member in position. The device may comprise a second through-passage comprising threads 82 (see Fig. 8). A set screw 58 for use with a driver is shown. The fastening member comprises a spherical mid-collar 22 that is approximately equivalent in size to a head portion of the set screw, which comprises a hexagonal portion exposed to the outside (i.e. is accessible by a tool from the outside of the device). The connecting member

comprises a gripping member 62 having a concave sidewall. The device includes a stem portion 74. The device can be characterized as having offset upper and lower portions with a relative angle between the portions being defined with respect to various different parts/features of the device (e.g. 74). The upper portion of the male-tapered external portion comprises a female-threaded recess. The disclosed method would be inherent in the ordinary use of the device. Brace et al. disclose the claimed invention except for reciting that the elongate support member could be secured to the connecting member by a clamping force provided at least in part by the fastening member. However, it would have been obvious to a person having ordinary skill in the art at the time the invention was made to have secured the elongate support member to the connecting member by a clamping force provided at least in part by the fastening member, as doing so is old and well-known in the art. Moreover, Heinig et al. teach that providing such a clamping arrangement provides greater freedom in locating the fastener in the spinal body and minimizes stress loading in the connecting portions (see, e.g., Heinig et al., Fig. 6 and col. 1, line 49 - col. 2, line 35). It would have been obvious to one having ordinary skill in the art at the time the invention was made to have provided the fixation device of Brace et al. with the elongate support member secured to the connecting member by a clamping force provided at least in part by the fastening member, in view of Heinig et al. in order to provide greater freedom in locating the fastener in the spinal body and minimize stress loading in the connecting portions.

***Response to Arguments***

Applicant's arguments with respect to claim the pending claims have been considered but are moot in view of the new ground(s) of rejection.

***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to David Comstock whose telephone number is (571) 272-4710 (a detailed message should be left if Examiner is unavailable). If attempts to reach the Examiner by telephone or voicemail are unsuccessful, the examiner's supervisor, Eduardo Robert, can be reached at (571) 272-4719. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/David Comstock/

Examiner, Art Unit 3733

/Eduardo C. Robert/

Supervisory Patent Examiner, Art Unit 3733